IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1165 OF 2002

Smt.Kamal Mansukhani .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr.Kotval for petitioner

Ms.M.H.Mhatre, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 4th October 2006.

P.C.

. This petition was directed to be heard along with Writ Petition No.1281 of 1994. The challenge in this petition is to an action

initiated by respondents on 16th July 2002, seizing the equipment from the Video Parlour as also proceeding to arrest, after investigations in F.I.R. 478 of 2002. The entire prosecution culminating in filing of a complaint before Metropolitan Court at Bandra is sought to be quashed in this petition.

2. Petition was admitted and interim relief was also granted. It appears that there was group of matters and somewhat similar controversy was involved therein. In Writ Petition No.1165 of 2002, additional affidavit has been filed by Police Sub-Inspector, Shahu Nagar Police Station, Dharavi. The matter was sought to be argued on merits before me when it was listed for hearing and final disposal.

3. However, Mr.Kotval pointed out that before the matter is proceeded on merits, petitioners have noticed one aspect which goes to

the root of the matter, inasmuch as, due to heavy rainfall on 26th July 2005, the entire papers and records at Shahunagar Police Station were destroyed. In such circumstances, even if the petition is dismissed on merits the complaint cannot be proceeded further.

4. Upon this statement of Mr.Kotval, I had directed learned A.P.P. to take instructions and place on affidavit true position with regard to availability record. Affidavit has been filed in Writ Petition No.1165 of 2002 in which following statement is made by the Senior P.I. Shahunagar Police Station:-

> " I say that, I am holding charge of Senior Inspector of Police, Shahu Nagar Police Station, Mumbai since 8/12/2005. On going through the record, it is learnt that on 26/7/2005 due to heavy rainfall in Mumbai, Shahu Nagar

> Police Station, was completely under the flood water. Therefore, records of this Police Station including papers of Writ Petition No.1165 of 2004 was destroyed. In this connection Station Diary entry No.35 and 40 was made and Police Control Room was informed accordingly."

5. Once the records of the police station, including, papers of writ petition are destroyed, then in my view, in the peculiar facts and circumstances of this case, no useful purpose will be served by keeping the prosecution pending. Therefore, once records are not available and cannot be produced, the prosecution will not be in a position to go ahead with the complaint pending before the Metropolitan Magistrate. This is apparent from the statement made in the affidavit. In such circumstances, Rule is made absolute and the prosecution is quashed only on this ground.

(S.C.Dharmadhikari, J)